

REMARKS

I. Introduction

Applicant respectfully requests that the foregoing amendments be made prior to examination of the present application. These amendments change claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented above, with an appropriate defined status identifier.

Upon entry of the foregoing amendments, claims 1-52 are pending in the application, with claims 1-5, 37-39, 41-43, and 47 being the independent claims. Claims 1-5 are currently amended. Claims 5, 32-36, 38-48, and 52 are withdrawn from consideration.

Claims 1-5 have been amended to more clearly define Applicants' invention. Specifically, claims 1 and 3-5 have been amended to replace the abbreviation "C" with the full term "carbon." Claim 2 has also been amended to delete the phrase "in predictable quantities." Support for these amendments can be found in the specification as filed, e.g., at page 3, paragraph [0009], lines 1-7, and paragraph [0010], lines 1-2.

These changes are believed to introduce no new matter and their entry is respectfully requested.

II. The Restriction and Election of Species Requirement

In response to the restriction requirement set forth in the Office Action dated November 21, 2007, Applicants hereby provisionally elect for prosecution the invention of Group IV, represented by claims 1-4, 6-13, 18-32, 37 and 49-51, which are drawn to a composition comprising a carbon-based diazeniumdiolate compound attached to at least one phenyl-containing polymer and having the formula of claim 3, wherein the polymer comprises a polymer backbone and the phenyl is pendant from the backbone, wherein the compound is not a imidate or thioimidate, and wherein R¹ is a cyano group. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed, and Applicants reserve the right to file a divisional application covering the subject matter of the non-elected claims.

In the Office Action dated November 21, 2007 setting forth the restriction requirement, the Examiner also requests that if Applicants elect Group IV claims for further prosecution, they must also elect a species defined in terms of

- (a) the moiety that is substituted on the phenyl group;
- (c) R²;
- (d) the polymer;
- (f) the medical device; and
- (g) the position of the attachment of the carbon-based diazeniumdiolate to the phenyl group. (Office Action, at page 9, lines 13-16.)

Thus, Applicants also provisionally elect for further prosecution the following species: a composition of claim 4 wherein

- (a) the pendant phenyl group attached to the polymer backbone is unsubstituted other than with the carbon-based diazeniumdiolate group;
- (c) R² is a sodium countercation;
- (d) a polystyrene polymer, (*i.e.*, the polymer that comprises the polymer backbone);
- (g) the *para* position (*i.e.*, the carbon-based diazeniumdiolate group is attached to the pendant phenyl group *para* to the phenyl group's attachment to the polymer backbone); and R¹ is cyano.

For claims 49-51, Applicants further provisionally elect the species in which (f), the medical device, is a stent. Support for this species can be found in the specification, e.g., at page 8, paragraph [0022], line 1; at page 9, paragraph [0025], line 5; at page 20, in Scheme 3; at page 33, in Example 1; at page 21, paragraph [0057]; and in claim 4 as originally filed. Claims 1-4, 6, 7, 11-13, 18, 25-28, 31, 32, 37 and 49-51 read on this species.

This election is made with traverse. The pending claims recite compositions comprising carbon-based diazeniumdiolate compounds attached to a phenyl-containing polymers that release nitric oxide, and to systems, methods and devices that utilize the compositions. Thus, the claims all share a common structural feature and common utility, and can be searched without undue burden upon the Examiner. Even if these claims

encompass multiple independent and distinct invention, the Examiner must examine all the claims if the search and examination of the claims can be made without serious burden.

Manual of Patent Examining Procedure, 8th Edition (August 2007), § 803, at page 800-4, left-hand column, lines 1-5.

Applicants additionally traverse the restriction requirement on the grounds that the search and examination of Groups III-VI is not unduly burdensome. According to MPEP section 803 “if a search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent and distinct inventions.” Applicants submit that the claims of Group IV should be examined with those of Groups III, V and VI, because the claims in all four groups recite compositions comprising carbon-based diazeniumdiolate compounds attached to phenyl-containing polymers in which the phenyl groups are pendant groups attached to the polymer backbone, and in which R¹ is an electron withdrawing group. See Applicants’ specification as filed, at page 7, paragraph [0021]. A search of Groups III-VI would not impose any burden upon the Examiner, because a search concerning the patentability of the invention of one group is likely to uncover art of interest to the other group. Therefore Applicant respectfully request that the Group IV claims be rejoined to the claims of Groups III, V and VI.

Applicant believes that the present application is now in condition for allowance. Favorable consideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Although Applicants believe that no additional fees are due, the Commissioner is hereby authorized to charge any additional fees deemed necessary, or credit any overpayment, to Deposit Account No. 19-0741.

Respectfully submitted,

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